WASHINGTON NOTES

THE NEW EMPLOYER'S LIABILITY ACT
A CHANGE IN FEDERAL CONTROL OF CORPORATIONS
THE MINNESOTA RATE CASE
INTERCORPORATE RELATIONS OF RAILWAYS
THE ALDRICH BILL
GOVERNMENT AND THE SUBTREASURY SYSTEM

In passing, on the ninth of April, an employer's liability bill (H. R. 20,310) Congress has nominally done what it could to repair the blow supposed to have been dealt at the "interests of labor" by the Supreme Court of the United States in its recent decision holding the employer's liability law of 1906 to be unconstitutional. It is worth noting that the new law was passed after about twenty minutes of debate in the House, and with but one dissenting vote, on April 6, while it was passed in the Senate on April 9, only three days later, without division and without sending the House measure to a Senate committee for amendment. The bill has thus been adopted exactly as it was reported by the House Judiciary Committee. It provides for awarding damages to men employed by interstate carriers in interstate commerce, in all cases where injury or death results in whole or in part from the negligence of any of the officers, agents, employees, or mechanisms of the carrier. Where an employee has been guilty of contributory negligence, the amount of damages to which he would otherwise have been entitled is to be reduced in proportion to the extent of such contributory negligence as determined by the jury in each individual case. Carriers are allowed to offset against such damages as may be awarded any amounts which they have contributed to insurance or indemnity funds through systems of their own. There is very excellent reason to believe that this bill, when tested in the courts, will be found subject to nearly the same objections that applied in the case of the liability law of 1906. The best lawyers who have examined it argue that it discriminates against carriers by making its terms applicable to them alone, while it seems to be unreasonably broad in its application. It is the opinion of informed members of Congress that legislation of this kind, having special attention to carriers, can be made constitutional only by applying it simply to extra-hazardous risks. The incurring of such special risks in a business like railroading is thought to lay an adequate legal foundation for the granting of special rights in the

recovery of damages. This phase of the matter was carefully stated to the labor interests while the bill was under consideration by the Judiciary Committee of the House. The labor advocates expressed their preference for a broad bill in order, as they put it, to get the maximum that the courts would permit to remain on the statute books. This seemed to them wiser than to prepare a carefully framed measure which would unquestionably stand the test of judicial study. It is the general belief that another period of employers' liability legislation will open after about two years have been allowed in which to declare the new bill unconstitutional.

The action of the administration in framing and submitting to Congress a bill designed to introduce substantial changes into the Sherman anti-trust law is likely to mark an epoch in the history of federal corporate control. This will be conspicuously true if the proposed bill should be enacted into law either in its original, or even in a greatly modified form. Should it not be passed, either at this or the next session of Congress, it will still be of very marked significance as indicating a new stage in the development of ideas on the relation between the federal government and corporate enterprises. The bill in question is H. R. 19745, and was introduced by Representative Hepburn on March 23. It was neither framed nor suggested by Mr. Hepburn, but was the outcome of lengthy conferences extending over several weeks. Those who participated in these conferences included the President, the Attorney-General, the Commissioner of Corporations and the Commissoner of Labor, representatives of the Civic Federation, President Gompers, of the American Federation of Labor, and several citizens who have been interested in anti-trust legislation. The bill is thus a composite product embodying the results of numerous suggestions coming from many diverse sources. In form it is a proposal to amend the Sherman anti-trust law by inserting sections 8, 9, 10, and 11, at the end of the bill, while section 7 is slightly changed and an alteration is made in the extent of the damages recoverable in suits under the Sherman act. Essentially the new sections thus provided for are a plan for the "registration" of corporate enterprises and of associations with the commissioner of corporations. The corporate enterprises referred to are, of course, the so-called "trusts" at which the Sherman act was originally aimed. The "associations" are the trade-unions to which the Sherman law has been applied

by the Supreme Court, contrary to the original intention of Congress. In registering with the commissioner of corporations the companies are required to file certain information as to their doings, their contracts, their purposes, etc., while the unincorporated associations or trade-unions are required simply to file copies of their charters, the names of their officers, and the addresses of the latter. The President is given power to establish from time to time regulations governing registration, and the commissioner of corporations may cancel the registration of any given concern whenever, in his judgment, such action may appear best. In the case of registered corporations and associations, contracts made subsequent to registration may be filed with the Bureau of Corporations, and in the event that they are not disapproved, no prosecution is to be set on foot by the United States unless the agreement entered into is in "unreasonable" restraint of trade—a situation which would have to be established by the attorney-general in a suit to determine the "reasonableness" of the combination. A distinction is drawn in favor of the associations, or labor unions, inasmuch as they are not required to file copies of their contracts as a condition of registration. The bill also provides for pooling agreements under the supervision of the Interstate Commerce Commission. It is thus seen that the proposed plan, (1) attempts to curtail the application of the Sherman anti-trust law by limiting the working of that law to unreasonable agreements in restraint of trade instead of to all classes of agreements; (2) seeks to legalize traffic agreements between railroads, now illegal under the Sherman law, subject to certain oversight by the Interstate Commerce Commission; (3) endeavors to exact from the concerns subject to the act a certain degree of "publicity" in return for the legalizing of contracts or combinations which are in "reasonable restraint" of trade. This is an important change from the line of thought which has been pursued of late by the administration. The Department of Justice has undertaken to carry on suits against combinations in restraint of trade independent of the reasonableness of such combinations—a point which is now yielded by this proposal. Labor interests have been favorable to the bill partly because of a section guaranteeing to them the "right to strike for any cause or to combine or to contract with each other or with employers for the purpose of peaceably obtaining from employers satisfactory terms." After a sharp tilt in the House of Representatives for the purpose of determining

whether the bill should more properly be referred to the House Committee on the Judiciary or the Committee on Interstate and Foreign Commerce, the measure was sent to the former, that being the committee which had charge of the original Sherman law of 1890. On April 4 and 6, representatives of capital and labor appeared before the committee to urge the favorable consideration of the plan. These included Hon. Seth Low, of New York, President Samuel Gompers, of Washington, and Professor J. W. Jenks, of Cornell University. In the course of a cruel cross-examination of the advocates of the bill, committee members made the point that the proposal of the administration confuses the executive and judicial powers which it bestows, and that it unduly discriminates in favor of trade-unions in the matter of registration. It has been made plain to the labor men that they would under the proposed measure in no way be enabled to carry on boycotts with immunity.

The decision of the Supreme Court of the United States in *ex parte* Young, on petition for writs of habeas corpus and certiorari (No. 10, October Term, 1907), handed down on March 23, 1908, is greatly reassuring those railroad men who have feared oppression by the governments of the several states. The decision clearly outlines the position of the court in respect to railroad control through state railroad commissions, and probably goes farther in asserting the sway of the federal constitution over the field of transportation than any other opinion that has lately been rendered by the court. The legislature of Minnesota created a railroad and warehouse commission, and that commission, on September 6, 1906, made an order fixing the rates for the various railroad companies for the carriage of merchandise, between stations in Minnesota, belonging to what is known as the "western freight classification." The penalty for disobedience to the orders of the commission was a fine of from $2,500 to $5,000 for the first offense, the penalty being doubled for every subsequent offense. Later, the legislature reduced the passenger rates in Minnesota from 3 cents per mile to 2 cents, and subsequently established rates of freight transportation for commodities not included in the western classification. For disobedience to any of these enactments, severe penalties were to be inflicted. The act prescribing rates for the western classification as well as the provision for lower passenger fares were observed by the roads, but, prior to the date on which

the rates for non-classified commodities were to take effect, suits in equity were begun in the Circuit Court of the United States for the District of Minnesota. These were brought by stockholders in the roads against Edward T. Young, the attorney-general of the state. The bill alleged that the orders of the railroad commission and the enactments of the state legislature were unjust, unreasonable, and confiscatory as well as being so drastic that, in bringing test cases to court, owners or operators of railroads were obliged to run the risk of imprisonment. Hence relief by injunction against Attorney-General Young and the railroad commission was requested. A temporary order was obtained, but this was met by an application on the part of the attorney-general for a writ of mandamus to be issued by one of the state courts. Such a writ, directing the railroads to observe the orders of the railroad and warehouse commission, then was issued. In reply, an order adjudging the attorney-general in contempt was made by the federal circuit court. Passing upon the issues involved, the Supreme Court of the United States now holds that the provisions of the acts relating to railroads were unconstitutional on their face, without reference to the reasonableness of the rates or charges sought to be imposed by the commission. This opinion is based upon the excessive penalties prescribed. The circuit court is held to have had the power to inquire whether given rates were confiscatory, and, if so, to enjoin the commission from applying them. The court says:

> The question of sufficiency of rates is important and controlling, and, being of a judicial nature, it ought to be settled at the earliest moment by some court; and, when a federal court first obtains jurisdiction, it ought . . . . to be permitted to finish the inquiry and make a conclusive judgment.

This view, if carried out in further decisions, will go far toward massing the general railroad jurisdiction of the country in the hands of federal courts, thereby relieving the danger to which railroad men have believed themselves subject, owing to recent state legislation.

One of the most valuable documents recently issued by the Interstate Commerce Commission is the report prepared under the supervision of Dr. Dixon, of the Division of Statistics and Accounts, with reference to the intercorporate relations of the railroads of the country. The report aims to show the actual holdings of railroad and other securities by railroads themselves, either as free treasury assets or as pledges for the security of other issues.

It is also intended to furnish data for correcting the faulty "Statistics of Railroads of the United States" in which a misleading exhibit has heretofore been made as to capital stock and outstanding securities. These exhibits have been given as if the total of stock and securities issued were in the hands of the public, whereas, in many instances, large volumes of such securities are held by other railways. The net results of the investigation show that the securities actually in the hands of the public amount to $7,842,400,969 of funded debt and $4,743,049,585 of stock, or about $36,173 per mile of funded debt, and $21,877 of stock, a total security holding per mile of $58,050. With this should be contrasted the fact that the grand total of outstanding securities of the railroads of the country amounts to $9,342,961,476 of funded debt and $8,884,234,925 of stock. The results thus set forth were obtained through direct inquiry of the railroads, made under the power granted in the amended interstate commerce act. The questions addressed to the roads included details as to the individual holdings of the various lines, the extent of voting power and control resulting from the possession of the securities, and other similar data. The statistics now presented seem tolerably complete.

A critical stage in the currency discussion of the winter was reached on March 27 when the Senate finally passed the Aldrich currency bill after the introduction of changes considerably altering its character. The passage of the bill, although secured by a large majority, was attained only at considerable sacrifice, the changes made being such as to antagonize many substantial interests. Chief among these were (1) a provision extending the types of bonds receivable as security for circulation in such a way as to include Philippine securities guaranteed by the government; (2) a provision that redeemed emergency notes when received by the treasury and paid for should be destroyed, the lawful money deposited by banks for the purpose of retiring outstanding circulation being held in the vaults as a trust fund instead of being transferred to the general fund and paid out or deposited in banks as is now the practice; (3) the restoration of the limitation of $9,000,000 per month upon old national bank note retirements; (4) the raising of the tax on the new emergency notes to three-quarters of 1 per cent. a month for every month after the first four of their life; (5) the prohibition of any "investment" of national bank funds or deposits

in stocks or securities issued by corporations whose officers or directors were at the same time officers or directors of the bank making the investment; (6) an alteration in the reserve requirements of the present act. On the arrival of the bill at the House, it developed that there was special objection to nearly all of these changes, particularly the restoration of the $9,000,000 limitation and the insertion of the section with reference to investments in corporate securities. It was argued that the latter provision would cut off a large volume of entirely proper and legitimate bank loans or else would deprive small banks in country towns from securing on their directorates the best business knowledge in the community. Feeling in the House evidently favored the laying aside of all positive legislation for this session, a bill for a currency commission being substituted in lieu thereof.

Secretary Cortelyou has transmitted to the Ways and Means Committee of the House a report dealing with the question whether the Treasury Department can accept certified checks on banks in payment of customs and internal revenue dues and can pay out such checks to public creditors who are willing to receive them. This question has been under actual discussion for about a year. When Mr. Cortelyou first took office, the topic was strongly presented to him and he then referred it to a committee of higher treasury officials, asking them to devise a plan whereby customs operations would be facilitated and the amount of money tied up therein would be reduced. The Committee expressed the opinion informally that no such change in existing practice could be made at those ports and places where subtreasuries existed. During the panic of last fall, stringent conditions were greatly intensified by the insistence of the administration upon actual cash payments at a time when there was great scarcity of money and currency. Secretary Cortelyou's report is now sent to the Ways and Means Committee in response to a proposed joint resolution placed before the committee some time ago in which it was stated that the secretary might well aid the commercial community by accepting and paying public dues in checks. The resolution was referred to Secretary Cortelyou for an opinion, and he has interrogated collectors and others with reference to methods employed and the proposed innovation. His report is unfavorable to adoption of the new system, in the absence of a change in the existing subtreasury law.